

E-Filed on: 8/28/07

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PAUL A. HARPER,

Plaintiff,

v.

PATRICIA V. TRUMBULL,

Defendant.

No. C-07-04191 RMW

ORDER DENYING PLAINTIFF'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS

[Re Docket No. 2]

On August 15, 2007, plaintiff initiated this action against the Honorable Patricia Trumbull, Magistrate Judge for the United States District Court, Northern District of California, seeking approximately \$1.5 million in damages.¹ Plaintiff simultaneously filed an application to proceed *in forma pauperis*.

In forma pauperis status requires two findings: a finding of indigence and a finding that the underlying claim has some merit. *See Bradshaw v. Zoological Society of San Diego*, 662 F.2d 1301 (9th Cir. 1981). Plaintiff satisfies the first requirement because of his low stated income. However, the court finds that because plaintiff seeks to sue a magistrate judge for actions taken in the course of her official duties, his complaint fails to state a claim upon which relief can be granted. Plaintiff asserts that Judge


¹ Plaintiff also appears to include an offer to settle for \$1 million if payment is made to him within 30 days.

1 Trumbull has "prejudiced plaintiff's rights under 42 U.S.C. sec. 1983" "as is witnessed in cases (1)
2 Harper v. Wieking, No. C-06-6320-RMW, case Harper v. Catterson, No. C-06-02587-SI, case Harper
3 v. Wieking, No. C-04-04314-RMW." Specifically, plaintiff appears to claim that Judge Trumbull
4 caused injury to him by her orders issued on January 31, 2007 and March 15, 2007 and that such orders
5 misled plaintiff. From a review of the dockets of the three cases referenced in plaintiff's complaint, it
6 appears that Judge Trumbull was involved only in Case No. C-06-6320 wherein she issued discovery-
7 related orders on January 31, 2007 and March 10, 2007. Case No. C-06-6320 was dismissed by the
8 undersigned.

9 Contrary to plaintiff's argument, a federal judge is absolutely immune from civil liability for acts
10 performed in her judicial capacity. *See Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir. 1996). "A
11 judge will not be deprived of immunity because the action he [or she] took was in error, was done
12 maliciously, or was in excess of his [or her] authority." *Stump v. Sparkman*, 435 U.S. 349, 356-57
13 (1978). A judge "will be subject to liability only when [s]he has acted in the 'clear absence of all
14 jurisdiction.'" *Id.* At most, Judge Trumbull could have issued erroneous discovery orders (which does
15 not appear to be the case) to which immunity continues to apply. On that ground, the court denies
16 plaintiff's application to proceed *in forma pauperis*.

17 Because the court finds that plaintiff's claim does not have the requisite merit to permit the
18 plaintiff to proceed *in forma pauperis*, the action will be dismissed unless the required filing fee is paid
19 by October 1, 2007.

20
21
22 DATED: 8/28/07



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been sent to:**

2 **Plaintiff:**

3 Paul A. Harper
4 P.O. Box 32621
5 Long Beach, CA 90832
6 PRO SE
7

8 **Dated:** 8/28/07

/s/ MAG
Chambers of Judge Whyte